

BEVERIDGE & DIAMOND, P.C.

477 MADISON AVENUE, 15TH FLOOR
NEW YORK, NEW YORK 10022-5802
(212) 702-5400 FAX: (212) 702-5450

Cliff Ng
**FACSIMILE
TRANSMISSION**

DATE: June 25, 1998**NUMBER OF PAGES:** *14*
(Including Cover)**FROM:** Sy Gruza**DIRECT DIAL #:** (212) 702-5414

TO	COMPANY	FAX NO.	PHONE NO.
Mr. Clifford Ng	USEPA	637-4035	637-4113

MESSAGE:

0087/0309

Confidentiality Note:

The information contained in this facsimile is confidential and may also contain privileged attorney-client information or work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received the facsimile in error, please immediately notify us by telephone, and return the original message to us at the address above via the U.S. Postal Service.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US IMMEDIATELY AT (212) 702-5400.

LAW OFFICES
BEVERIDGE & DIAMOND, P.C.
15TH FLOOR
477 MADISON AVENUE
NEW YORK, NY 10022-5802
(212) 702-5400
TELECOPIER (212) 702-5450

SY GRUZA
(212) 702-5414
7540419@MCIMAIL.COM

June 25, 1998

VIA FAX AND FEDERAL EXPRESS

Mr. Clifford Ng
USEPA, Region II
Air and Waste Management Division
290 Broadway
New York, NY 10007-1866

Re: Proteco

Dear Mr. Ng:

Pursuant to the Closure Plan, Proteco previously excavated approximately 19,000 cubic yards of material from former hazardous waste Unit No. 9,¹ which is to be placed within the approved CAMU Unit after it is constructed. Pending the completion of the CAMU Unit construction, Proteco temporarily stockpiled that material on a lined and bermed area.

As a result of the recent rainstorms in Puerto Rico, a significant volume of water has run-off the stockpile of Unit No. 9 material and collected in a lined sump. Proteco sampled and analyzed that rainwater run-off. The results of that analysis establish that the run-off water does not contain any hazardous constituents at detectable concentrations. A copy of the laboratory analysis is annexed hereto as Exhibit A.

Proteco intends to direct the rainwater run-off through its diversion ditches to its settling basin as non-hazardous water. The purpose of this letter is to provide EPA with notification of the intended discharge.

First, the rainwater at issue properly constitutes run-off and not leachate. The Unit No. 9 excavated material already has undergone stabilization treatment and has been placed on the

¹ Unit No. 9 was an oil lagoon previously used to collect waste oil.

BEVERIDGE & DIAMOND, P. C.

Mr. Clifford Ng

June 25, 1998

Page 2

temporary storage area. Following each rainstorm, there is no evidence of any ponding or pooling of the rainwater on the excavated material. Rather, the rainwater merely runs off the stockpiled material and collects in the lined sump area. The absence of hazardous constituents in the collected rainwater (see Exhibit A) is further evidence that the rainwater is not in contact with the Unit No. 9 material very long, but instead rolls off quickly.

Pursuant to the applicable regulations, see 40 CFR § 261.3(c)(2)(i), rainwater run-off can be a hazardous waste only if it has any of the characteristics of a hazardous waste. Here, the sampling and analysis establishes that the rainwater run-off does not have any of the characteristics of a hazardous waste. Accordingly, Proteco should be able to discharge the rainwater run-off as non-hazardous water.

Second, even if EPA deems the collected rainwater to be leachate, and not run-off, Proteco should still be able to discharge the collected rainwater as non-hazardous water. As set forth in Proteco's prior Closure Plan submissions, the primary waste disposed of in Unit 9 had a waste code designation of D-001, i.e., it was a characteristic hazardous waste. Although wastes with other waste codes may also have been disposed of in Unit No. 9, such specific additional disposal could not be confirmed. See Exhibit B.² Thus, the material excavated from Unit No. 9 is characteristic hazardous waste, but not a listed hazardous waste. See 53 Fed. Reg. 31138, 31149 (August 17, 1988) (EPA responding to comments concerning fact that facilities which did not maintain complete and accurate records concerning what wastes were accepted in the past for disposal will be able to avoid treating the disposed material as a listed hazardous waste and will be able to treat it as characteristic hazardous waste).

Therefore, even if EPA deems the collected rainwater to be leachate, it would be a hazardous waste only if it had any of the characteristics of a hazardous waste. See 40 CFR § 261.3(d)(1). As established by the laboratory analysis annexed hereto, the collected rainwater is not a characteristic hazardous waste. Therefore, Proteco should be able to discharge the collected rainwater as non-hazardous water.

Finally, even if EPA deems the collected rainwater to be leachate, and not run-off, and further deems the excavated material from Unit No. 9 to contain listed hazardous waste, Proteco

² Exhibit B, which is page 1-4 from Proteco's Closure Plan, appears to contain typographical errors. Listed waste codes D106 and D108 might have been intended to be D016 and D018, respectively. It appears that listed waste codes F154 through F239 probably should have been listed as U154, U188, U196, etc. In any event, half of those waste codes designate characteristic hazardous wastes, and not listed hazardous wastes.

BEVERIDGE & DIAMOND, P. C.

Mr. Clifford Ng
June 25, 1998
Page 3

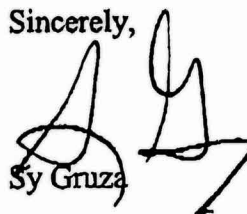
still should be able to discharge the water as non-hazardous environmental media. Environmental media that contain listed hazardous wastes must be managed as hazardous waste only if and/or only as long as they contain listed hazardous waste(s).³ Environmental media which are determined not to contain any listed hazardous waste are just media, and are not subject to any RCRA Subtitle C requirements, including the Land Disposal Restrictions ("LDRs"). See n. 3.

Here, the relevant sampling and analysis establishes that the collected rainwater does not contain any listed hazardous waste. Therefore, pursuant to the "contained-in" concept, the rainwater is just environmental media and is not subject to any RCRA Subtitle C requirements.

Proteco needs to discharge the rainwater run-off without delay. Proteco requests that if EPA has any objection to the intended discharge, it notify the undersigned as soon as possible.

Thank you for your prompt attention and cooperation.

Sincerely,



Sy Gruza

SG:lb
Enclosure

cc: Dr. Jorge Fernandez
Mr. Steve Young
Stephen L. Gordon, Esq.

N:\CLIN00\87\0309\LTR\0309SG.078

³ See June 19, 1989 letter from Jonathan Cannon, Acting Assistant Administrator of EPA's Office of Solid Waste and Emergency Response to Thomas Jorling, Commissioner of the New York Department of Environmental Conservation, quoted in September 15, 1995 letter from Michael Shapiro, Director, EPA's Office of Solid Waste to Peter C. Wright, Monsanto Company.

EXHIBIT

A

LAW ENVIRONMENTAL CARIBE
 1225 Ponce De León Ave.
 Casa Bldg. Suite 603
 Santurce, P.R. 00907
 Attn: MRS. JONI KEYSER
 Invoice Number:

Order #: 98-06-601
 Date: 06/19/98 11:47
 Work ID: Deionized Water - Grab
 Date Received: 06/15/98
 Date Completed: 06/19/98
 Client Code: 513_01_

DS #: 97-14583
 Sample collected by Client
 Limit = Maximum Contaminant Level

Facility: Proteco Landfill

SAMPLE IDENTIFICATION

Sample Number	Sample Description
01	Trip Blank

Sample Number	Sample Description



Post-Net Fax Note	7671	Date	6-22-98	Page	9
To: Gruza		From: Steve Young			
Co/Dept		Co.			
Phone #		Phone #			
Fax # 212-705-5450		Fax # 770-421-3377			
702					



ENVIRONMENTAL QUALITY LABORATORIES, INC.
 P.O. BOX 11482, SAN JUAN, P.R. 00910-1482 - TEL: (787) 725-1333 - FAX: (787) 725-2110



Order # 98-06-601
06/19/98 11:47

Page 2

TEST RESULTS BY SAMPLE

Sample: 01A Trip Blank

Collected: 06/15/98

Job: 01-16C Deionized Water - Grab

<u>TEST DESCRIPTION</u>	<u>RESULT</u>	<u>LIMIT</u>	<u>DATE</u>	<u>ANALYZED</u>	<u>BY</u>
<u>TCLP:</u>					
TCLP EXTRACTION					
Zero Headspace Extraction			on	06/16/98	EC
<u>TCLP VOLATILES</u>					
Benzene	<0.10	0.50	ug/L	06/17/98	KP
Carbon Tetrachloride	<0.10	0.50	ug/L	06/17/98	KP
Chlorobenzene	<0.10	100	ug/L	06/17/98	KP
Chloroform	<0.10	8.0	ug/L	06/17/98	KP
1,4-Dichlorobenzene	<0.10	7.5	ug/L	06/17/98	KP
1,2-Dichloroethane	<0.10	0.50	ug/L	06/17/98	KP
1,1-Dichloroethene	<0.10	0.70	ug/L	06/17/98	KP
Tetrachloroethane	<0.10	0.70	ug/L	06/17/98	KP
Trichloroethene	<0.10	0.50	ug/L	06/17/98	KP
Vinyl Chloride	<0.10	0.20	ug/L	06/17/98	KP
Methyl Ethyl Ketone	<1.0	200	ug/L	06/17/98	KP



ENVIRONMENTAL QUALITY LABORATORIES, INC.
P.O. BOX 11478, SAN JUAN, P.R. 00916-1458 - TEL: (787) 726-4330 - FAX: (787) 726-3110



1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600

LAW ENVIRONMENTAL CARIBE
 1225 Ponce De Leon Ave.
 Case Bldg. Suite 603
 San Juan, P.R. 00907
 Attn: MRS. JONI KEYSER
 Invoice Number:

Order #: 98-06-600
 Date: 06/19/98 11:47
 Work ID: Surface/Streamwater - Grab
 Date Received: 06/15/98
 Date Completed: 06/19/98
 Client Code: 513_01_

DS # 97-14583
 Sample collected by Client
 Limit = Detection Limit

Facility: Proteco Landfill

SAMPLE IDENTIFICATION

Sample	Sample
Index	Description
01	Unit 9

Sample	Sample
Number	Description



LAW ENVIRONMENTAL CARIBE
1225 Ponce De León Ave.
Caso Bldg. Suite 603
Sanjurjo, P.R. 00907
Attn: MRS. JONI KEYSER
Invoice Number:

Order #: 98-06-599
Date: 06/19/98 11:47
Work ID: Surface/Streamwater - Grab
Date Received: 06/15/98
Date Completed: 06/19/98
Client Code: 513_01

DS # 97-14583

Sample collected by Client

Limit = Maximum Contaminant Level

Facility: Protoco Landfill

SAMPLE IDENTIFICATION

Sample Number	Sample Description
02	Unit 9

Sample Number	Sample Description
------------------	-----------------------



ENVIRONMENTAL QUALITY LABORATORIES, INC.

P.O. BOX 11438, SAN JUAN, P.R. 00910-1438 • TEL: (787) 725-3331 • FAX: (787) 724-3110



Order # 98-06-599

06/19/98 11:47

Page 2

TEST RESULTS BY SAMPLE

Sample: 01A Unit 9

Collected: 06/15/98

Job: 01-16K Surface/Streamwater - Grab

Test Description	Result	Limit	Units	Analyzed	By
TCLP:					
TCLP EXTRACTION					
Zero Headspace Ext.			on	06/16/98	HC
Semi-Vol & Metals Ext.			on	06/16/98	JFD
TCLP METALS					
Total Arsenic	<0.001	5.0	ug/L	06/17/98	JC
Total Barium	<0.1	100	ug/L	06/18/98	IJ
Total Cadmium	<0.002	1.0	ug/L	06/18/98	JC
Total Chromium	<0.002	5.0	ug/L	06/17/98	JAG
Total Lead	<0.005	5.0	ug/L	06/17/98	JC
Total Mercury	<0.002	0.20	ug/L	06/17/98	IJ
Total Selenium	<0.001	1.0	ug/L	06/17/98	JC
Total Silver	<0.001	5.0	ug/L	06/17/98	JAG
TCLP VOLATILES					
Benzene	<0.10	0.50	ug/L	06/17/98	XP
Carbon Tetrachloride	<0.10	0.50	ug/L	06/17/98	XP
Chlorobenzene	<0.10	100	ug/L	06/17/98	XP
Chloroform	<0.10	6.0	ug/L	06/17/98	XP
1,4-Dichlorobenzene	<0.10	7.5	ug/L	06/17/98	XP
1,2-Dichloroethane	<0.10	0.50	ug/L	06/17/98	XP
1,1-Dichloroethane	<0.10	0.70	ug/L	06/17/98	XP
Tetrachloroethene	<0.10	0.70	ug/L	06/17/98	XP
Trichloroethene	<0.10	0.50	ug/L	06/17/98	XP
Vinyl Chloride	<0.10	0.20	ug/L	06/17/98	XP
Methyl Ethyl Ketone	<1.0	200	ug/L	06/17/98	XP
TCLP SEMI-VOLATILES					
Pyridine	<5.0	5.0	ug/L	06/17/98	CD
Nitrobenzene	<0.1	2.0	ug/L	06/17/98	CD
2,4-Dinitrotoluene	<0.1	0.13	ug/L	06/17/98	CD
Hexachlorobenzene	<0.001	0.13	ug/L	06/17/98	CD
Hexachloro-1,3-Butadiene	<0.01	0.50	ug/L	06/17/98	CD
Hexachloroethane	<0.01	1.0	ug/L	06/17/98	CD
Pentachlorophenol	<1.0	100	ug/L	06/17/98	CD
2,4,5-Trichlorophenol	<1.0	400	ug/L	06/17/98	CD
2,4,6-Trichlorophenol	<1.0	2.0	ug/L	06/17/98	CD
o-Cresol - Note #1	<1.0	200	ug/L	06/17/98	CD
m,p-Cresol - Note #1	<1.0	200	ug/L	06/17/98	CD
Extraction Date			on	06/17/98	HC
TCLP PESTICIDES					
Chlordane	<0.003	0.030	ug/L	06/17/98	IEH





naturally occurring in the area soil at the levels detected.

o On 5/21/96 and 7/16/96 a PRDA Inspector felt drift from pesticide/ fertilizer applications at Tropical Fruits.

3

o The medical records obtained by PRDA do not clearly identify the diagnosis of pesticide poisoning/ exposure.
o PRDA has issued a letter and Administrative Order to Tropical Fruits for violations of misuse, storage, disposal, and distance of application from residences.

o Tropical Fruits is not in compliance with the terms of the letter and Administrative Order.

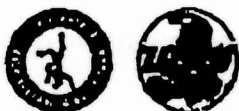
o Since Tropical Fruits did not comply with the requirements identified in the Administrative Order a Temporary Restraining Order was issued. The Order expired on 7/9/96. PRDA is seeking a permanent injunction.

o On 7/23/96 a letter from Jeanne Fox to PRDA, Secretary of n Agriculture. EPA will take action if the situation is not resolved within the next month.

o On 8/23/96 EPA issued a warning letter for the WPS violations.

o As of 9/12/96 the PRDOJ did not know the status of the motion for permanent injunction that was filed with the Court on 8/27/96. No information can be provided by the Courts because of closure due to Hurricane Hortense.

TEST RESULTS BY SAMPLE		Pesticides		Extraction Date	
By	Sample	Result	Label	mg/L	06/27/98
methoxychlor	10	<0.010	1.0	mg/L	06/27/98
toazbenc	0.50	<0.050	1.0	mg/L	06/27/98
lindane	0.40	<0.005	1.0	mg/L	06/27/98
heptachlor	0.0080	<0.005	1.0	mg/L	06/27/98
heptachlor epoxide	0.0080	<0.005	1.0	mg/L	06/27/98
Endrin	0.0080	<0.005	1.0	mg/L	06/27/98
Extraction Date	06/27/98	06/27/98	06/27/98	06/27/98	06/27/98



information can be obtained as the Courts are closed due to Hurricane Hortense.

2

- o FIFRA requires that a warning letter be sent to farmers for the first violation prior to the assessment of any civil penalty. EPA issued a warning letter to Tropical Fruits for violation of the Worker Protection Standard requirements on 8/23/96.
- o CID/ US Attorney opened a formal investigation on 8/7/96.

IV. Investigation of Health Concerns

- o PRDA interviewed residents of Punta Ventana on 2/15/96, 2/16/96 and 3/26/96 and obtained affidavits which allege exposure to pesticide drift and health problems.
- o PRDA obtained the medical records the medical records do not conclusively identify pesticide poisoning. The diagnosis are primarily allergic reactions, viral syndrome, asthma, pneumonia, respiratory difficulty and gastroenteritis. Many of the records identify a treatment plan including antibiotics and benadryl. According to a telephone conversation with Dr. Sheldon Wagner of the Medical Hotline pesticide poisoning symptoms would no be affected by antibiotics. The symptoms do not of themselves prove exposure to pesticides.

V. Other Activities

- o On 5/14/96 PRDA Undersecretary of Agriculture met with some residents of Punta Ventana.
- o A meeting was held between the Secretary of Agriculture and the residents of Punta Ventana on 6/27/96.
- o Fred Kozak, Luis Santos and PRDA met with the community of Punta Ventana on 7/18/96.
- o Jeanne Fox met with the leaders of Punta Ventana on 8/13/96
- o On 7/23/96 Jeanne Fox sent a letter to PRDA Secretary of Agriculture identifying that, EPA will take action if the situation is not resolved within the next month.

1) Where crosses cannot be differentiated, regulatory level for total cross is 200 mg/L.

VI. Summary

- o PRDA has addressed our 5 page inspection guidance. Approximately 170 samples were collected. Sample analysis detected residues of Copper, Malathion and Supracide. The Copper residues are not significant because Copper is

Note:

Source: 170

4

EXHIBIT B

1.2.5 Waste Unit 5

Waste Unit 5 was used to bury drums containing various waste streams. The quantity of drums, the volume of waste, and the waste code designations for the material contained in the burial pit is unknown at this time.

1.2.6 Waste Unit 7

Waste Unit 7 was used as a neutralization impoundment. Records indicate that the pit received characteristic corrosive wastes and no listed wastes. The latest sampling activities at the site indicate that the contents of the unit do not exhibit the characteristic of corrosivity. It is estimated that 2,700 cubic yards of waste will be removed, treated, and closed as part of the CAMU.

1.2.7 Waste Unit 9

Waste Unit 9 was an oil lagoon used to collect waste oil. The waste believed to be contained in the unit was approximately 477,700 gallons of water and approximately 300,000 gallons of sludge. During the fall of 1994, soil was added and mixed with the liquid in the lagoon to produce a solid matrix. The substance was then covered with clean soil to the grades of the surrounding area. The primary waste is believed to be waste code designation D-001, but D-002, D-005, D-007, D-008, D-009, D-010, D-013, D-106, D-108, F-001, F-002, F-154, F-188, F-196, F-210, F-220, F-226, F-230, and F-239 are may also be present. It is estimated that 5,300 cubic yards of waste will be treated and closed as part of the CAMU cell.

1.2.8 Waste Unit 10

Waste Unit 10 is one of three immobilization facilities which is believed to contain approximately 950 cubic yards of waste. The constituents are not known.

1.2.9 Waste Unit 11

Waste Unit 11 is the second of three immobilization facilities that is being closed at the site. The unit is believed to contain approximately 5,800 cubic yards of waste consisting of the following waste code designations; D-001, D-002, D-008, D-009, D-013, F-002, F-009, U-044, U-138, U-140, U-144, U-154, U-156, U-188, U-201, U-210, U-226, and U-239.

1.2.10 Waste Unit 12

Waste Unit 12 was used as a land treatment area and contains approximately 17,800 cubic yards of waste that is designated with the waste codes of D-002, D-013, and F-003.